



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 12, 1996

Mr. Gary Keane
General Counsel
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR96-2376

Dear Mr. Keane:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102849.

The Dallas/Fort Worth International Airport (the "airport") received an open records request for Section 3.0 of the proposal submitted to the airport by Universal Internet Solutions ("Universal"). You sought an open records decision from this office pursuant to section 552.305 of the Government Code. Consequently, this office notified representatives of Universal of the open records request for the section of Universal's proposal and requested an explanation as to why the requested information was excepted from public disclosure.

Universal responded to our notice in a timely manner. Although Universal did not raise any of the Open Records Act's specific exceptions to required public disclosure,¹ it did contend that the information at issue constitutes a "trade secret." Section 552.110 of the Government Code excepts from required public disclosure

¹We note that information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In other words, a governmental body cannot, through a contract, overrule or repeal provisions of the Open Records Act. Attorney General Opinion JM-672 (1987). Consequently, unless the requested information falls within one of the act's exceptions to disclosure, it must be released, notwithstanding any contract between the airport and Universal specifying otherwise.

[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

This section protects two categories of information: 1) trade secrets and 2) commercial or financial information. There are six factors to be assessed in determining whether information qualifies as a trade secret.² This office must accept a claim that information is excepted as a trade secret if a prima facie case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5. In this instance, however, Universal has not explained how these six factors apply to the information at issue. Consequently, we have no basis on which to conclude that the "trade secrets" aspect of section 552.110 applies here.

The airport claims that section 552.104 of the Government Code excepts the requested information from required public disclosure. Section 552.104 protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the government's interests when it is involved in commercial transactions. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982), 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

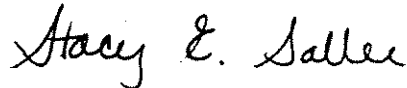
In this instance, you inform this office that the airport has already awarded a contract to Universal in connection with its proposal. Consequently, there is no ongoing competitive situation to which the information at issue relates. Section 552.104 therefore does not apply to the requested information. Accordingly, because neither you nor Universal have demonstrated that the information at issue is excepted from required public disclosure, the airport must release the requested information in its entirety.

²These six factors are

- 1) the extent to which the information is known outside of [the company's] business; 2) the extent to which it is known by employees and others involved in [the company's] business; 3) the extent of measures taken by [the company] to guard the secrecy of the information; 4) the value of the information to [the company] and to [its] competitors; 5) the amount of effort or money expended by [the company] in developing this information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/RWP/ch

Ref.: ID# 102849

Enclosures: Submitted documents

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